

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JAMES L. SMITH,	)	
	)	4:06cv3132
Petitioner,	)	
	)	MEMORANDUM AND ORDER
vs.	)	
	)	
WARDEN, FPC YANKTON,	)	
	)	
Respondent.	)	

This matter is before the court on filing no. 11, the Judgment by the Eighth Circuit Court of Appeals affirming the judgment of this court and assessing the \$455 appellate filing and docketing fees against the petitioner, James L. Smith. The Eighth Circuit's Judgment states in pertinent part: "The full \$455.00 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. sec. 1915(b)(2). The court remands the assessment and collection of those fees to the district court."

The Eighth Circuit has instructed this court to assess an initial partial appellate filing fee in a reasonable amount based on information available to the court. Henderson v. Norris, 129 F.3d 481, 484 (8<sup>th</sup> Cir. 1997). The court will assess an initial partial appellate fee of \$1.00 with the remaining balance of the \$455.00 of the appellate filing and docketing fees to be collected, subject to availability of funds in the plaintiff's inmate trust account, in installments in the manner specified by 28 U.S.C. § 1915(b)(2).

THEREFORE, IT IS ORDERED:

1. That the Eighth Circuit Court of Appeals has adjudged the plaintiff liable for the full \$455.00 appellate filing and docketing fees;
2. That the fees may not be waived but may be paid in installments pursuant to 28 U.S.C. § 1915(b);
3. That the plaintiff's custodian shall collect from the plaintiff's inmate trust account an initial partial appellate filing fee of \$1.00, and shall remit that amount to the

Clerk of Court as funds become available;

4. That, thereafter, all present and future custodians of the plaintiff shall collect and remit the balance of the \$455 appellate filing and docketing fees in the manner required by 28 U.S.C. § 1915(b)(2); and

5. That the Clerk of Court shall send a copy of this Memorandum and Order to the appropriate financial officer for the plaintiff's institution.

February 20, 2007.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge